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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

REENA B.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
BARBARA COUNTY,

Respondent;

SANTA BARBARA COUNTY CHILD  
WELFARE SERVICES,

Real Party in Interest.

2d Civil No. B196722  
(Super. Ct. No. J-1121319)  
(Santa Barbara County)

Reena B. has four children, each by a different father. Four-year-old Steven B. and his infant brother, Isaac, were removed from her custody due to her drug use and incarceration which rendered her unable to supervise or care for them. Reena B., in pro. per., seeks extraordinary writ review of an order of the juvenile court setting the matter for a hearing terminating parental rights and establishing adoption as a permanent plan. (Welf. & Inst. Code, § 366.26.)<sup>1</sup>

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## FACTS

Mother was incarcerated from December 2003 to February 2004 for a drug-related offense. During this time, she left her children with her live-in boyfriend, Jorge M. (Isaac's presumed father), who has convictions for drug and alcohol-related offenses, domestic violence, felony corporal punishment on a child, burglary and vehicle theft.

One month after her release, mother was arrested for being under the influence of methamphetamine and for violating probation. She was incarcerated at Santa Barbara County Jail. Three days later, Jorge left Steven at the doorstep of the home of Steven's maternal great grandmother. She is unable to care for Steven. Although the court's orders make reference to both children, only Steven is the subject of the appeal.

### *Combined Jurisdiction/Disposition Hearing*

Mother admitted the allegations of the section 300 petition and the juvenile court took jurisdiction and declared Steven a dependent child under subdivisions (b) and (g). The court ordered that reunification services be provided to mother and adopted the recommendation in the case plan that mother be released to a 21-day detoxification residential program followed by a residential program for substance abuse treatment. Mother was also to attend parenting classes and undergo a psychological or psychiatric evaluation and any treatment recommendations resulting from the evaluations. Mother was permitted two supervised visits per week with Steven. Steven's father, Daniel H., is not a party to this appeal.

### *Six-Month Review Hearing*

Child Welfare Services (CWS) filed a status review report in October 2004. It indicated that mother had successfully completed her in-patient treatment program at Casa Serena and would transition into the Project Premie after-care inpatient program. An extended visit with Steven was anticipated and the social worker and staff at Project Premie would determine when Steven could be returned to mother's care.

Steven was living in a shelter home and had been moved four times during the review period due to aggressive and hyperactive behavior. He was often irritable, impatient and used profanity. His aggression could escalate to choking and kicking. The consensus among foster parents was that Steven is not malicious. Rather, he requires a tremendous amount of individual attention and has a strong desire for someone to love him. He has since been diagnosed as suffering from Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder.

*Steven Returned to Mother's Care in December 2004*

In December 2004, CWS filed a petition seeking modification of the juvenile court's order concerning reunification services. It was recommended that family maintenance services be offered to Steven and his mother. (§ 388.) She had successfully completed a three-month inpatient program and transferred to a transitional home that would enable her to have Steven in her care. Mother had "consistently and actively" participated with the family reunification service case plan. Offering mother family maintenance would allow her to address Steven's behaviors in a structured and supportive environment. The court found that there were changed circumstances justifying the return of Steven to the care of his mother and adopted the recommended order.

*Steven Removed from Mother's Care in January 2005*

In January 2005, CWS filed a petition requesting that Steven be removed from mother's care. (§ 387.) It reported that she had been unable to appropriately parent and discipline Steven. Staff at Project Premie indicated that mother had used profanity and inflicted inappropriate physical punishment on Steven on two occasions. She was frustrated and overwhelmed and showed a lack of patience towards Steven. His behaviors were combative, he was disruptive to the program and has impeded mother's participation and recovery. Apparently following such an incident, mother had taken 17 Excedrin within a 24-hour period. She was asked to leave the program immediately and Steven was removed from her care.

Mother admitted the allegations of petition. The court adopted the recommended findings and orders and granted additional family reunification services. Steven was placed in a foster home.

*Steven Returned to Mother's Care in April 2005*

In April 2005, CWS prepared a status review report indicating that mother had made excellent progress and had been clean and sober for 10 months. She had obtained adequate housing for herself and Steven and was employed as a waitress.

In June 2005, CWS filed another petition requesting that Steven be returned to the care of mother and that family maintenance services again be offered. (§ 388.) Mother had been drug-free for over one year and had demonstrated a desire and ability to parent Steven, and a strong bond existed between them. Steven had responded to the love, security and acceptance provided by his biological family, and he and his mother were receiving services to help normalize his behavior. Mother had complied with her case plan and developed a support system for herself and Steven.

The social worker indicated that Steven had been placed in seven different homes over a period of 15 months. Each time he was removed from a placement, his oppositional behavior escalated. However, the more time Steven spent with mother, the less oppositional he became.<sup>2</sup> The court granted the petition in July 2005.

*Steven Removed From Mother's Care in September 2005*

In September 2005, CWS filed a petition requesting that Steven be removed from his mother's care and returned to foster care. (§ 387.) The petition reflected that Steven had been placed with mother in July, but her stability had begun

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<sup>2</sup> Of additional import was the fact that, on April 21, 2005, Steven suffered a serious head injury and underwent emergency surgery to relieve the pressure from a subdural hematoma. According to the hospital reports, mother provided significant comfort to Steven while he was hospitalized. After his discharge, the doctors required that he remain out of school for four weeks. Steven was given liberal overnight visits with mother and responded positively to the time spent together. His oppositional behavior dropped from six times per week to three times per week.

to deteriorate within five weeks. Mother stopped participating in the programs, failed to return phone calls and caused Steven to miss 17 out of 40 days of school. Mother admitted to the social worker that she was using methamphetamines and, several days later, was arrested for being under the influence of a controlled substance. At that time, she was pregnant with her fourth child who was due in November. The court ordered that Steven be removed from his mother's home and placed in a foster home. The court subsequently terminated family reunification services.

#### *Steven Moved to New Foster Home*

By the time of a contested dispositional hearing in February 2006, Steven was in his 10th placement. The court ordered that Steven remain in long term foster care and he was moved to his 11th home. Mother was still incarcerated and visitation was limited to phone calls because she did not want her children to see her in jail.

A six-month permanency planning hearing was held for Steven in August 2006. The social worker reported that Steven had been in the same foster home for six months. His behavior "has made almost a complete turn around" since visitation with his biological family (either by phone or in person) was suspended.<sup>3</sup> He had graduated from Therapeutic Behavioral Services and finished Kindergarten as the top student in his class. He was also participating in athletics.

Steven has bonded with his foster parents and calls them "mom and dad" and they have expressed an interest in adopting him. He has dramatically increased his coping skills while decreasing his aggression.

#### *Permanency Planning Review*

The court held a permanency planning review hearing on February 8, 2007. (§ 366.3.) CWS recommended that a section 366.26 hearing be scheduled to change the permanent plan from long term foster care to adoption. Steven had been in the same foster home for almost one year. Although he exhibited disruptive behavior

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<sup>3</sup> The court had given CWS discretion to suspend visits with his biological family if they had any adverse effects on his emotional or behavioral stability.

after beginning first grade, he has shown marked improvement after being placed on medication to treat his ADHD symptoms. Mother remains incarcerated. Stephen has received educational testing and has reached proficiency in all scholastic areas, except for reading fluency. With the support of his foster parents, Steven's teacher expects he will be proficient in this area by the end of the school year.

CWS offered a report of a psychologist who had evaluated Steven. It was her opinion that he would be at increased risk of behavioral and emotional problems if his attachment to his foster parents is threatened. The psychologist specified that any communication from mother which Steven interpreted as leading to his removal of his foster family, and reuniting with mother, would be destructive.

The juvenile court found that returning Steven to his mother would create a substantial risk of detriment to his physical or emotional well-being; that long term foster care is no longer the appropriate plan; and visitation between Steven and his mother would be detrimental to him. The court set the matter for section 366.26 hearing for May 31, 2007. Mother filed a notice of intent to file writ petition, requesting reunification services, visitation and custody of Steven. She had also requested a continuance of the section 366.26 hearing until July 7, 2007.

#### *Mother's Writ Petition*

Mother filed a petition for extraordinary writ for review of the juvenile court's order setting a section 366.26 hearing, using the standard Judicial Council Forms (JV-820 and JV-825). She stated in the petition that she wants Steven to be "[h]ome with his mother" and explained that she did not attach supporting documents because she is incarcerated. As to the factual basis for the petition, mother wrote, "Because my son should be with his mother and I can provide a good healthy home for him." She requested that the court grant reunification services, visitation and custody and asked for a continuance "[b]ecause I'm in custody and I need time to get stuff in order."

## DISCUSSION

### *Procedural Defects*

Respondent contends that mother's writ is procedurally defective. It argues that mother failed to include a factual summary, separately state each point or to include argument or citation to legal authority. Respondent also claims that mother has waived the issues of reunification or custody by failing to raise them below. At the section 366.3 hearing on February 8, 2006, mother did not raise the issues of reunification or custody or object to the juvenile court's finding that visitation was detrimental to Steven. We nonetheless consider her arguments on the merits.

### *Family Reunification Services and Visitation*

When a child has been removed from the physical custody of a parent, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child . . . would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.22, subd. (a).)

A parent is entitled to reunification services of 12 months from the date the child entered foster care. (§ 361.5, subd. (a)(1).) Court ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody the parent. (§ 361.5, subd. (a)(3).) If family reunification services are terminated, the parent is entitled to visitation unless it would be detrimental to the child. (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504.) When reunification services are terminated, continued foster care is presumed to be in the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Steven was removed from mother's care in March 2004 and returned to her care in December. He was removed again in January 2005 and returned in July. In September he was removed for the third time. Mother has not shown that additional

family reunification services are in Steven's best interest. Nor has she demonstrated an ability to maintain her sobriety or to provide for Steven and cope with his behaviors.

Mother was originally incarcerated for a drug offense. One month after her release, she was arrested and incarcerated again for another drug-related offense. Mother was granted reunification services and complied fully with her case plan. Due to mother's continued progress, she was offered family maintenance and Steven was returned to her care. Five weeks later, Steven was again removed from her care. His disruptive behavior overwhelmed mother and impeded her recovery. She disciplined him inappropriately, used profanity and was ultimately asked to leave the program.

Mother worked diligently to have Steven returned to her care. She returned to counseling and obtained housing and employment and CWS reported excellent progress. Several weeks later, Steven suffered a traumatic head injury and was hospitalized. During this time, mother's bond with son became apparent. Her presence had a comforting effect on Steven, who spent increased time in her care after his release from the hospital. CWS believed that mother had successfully created a support system and Steven was becoming less oppositional. He was returned to his mother's care.

A short time later, mother began using methamphetamines, ceased attending her programs and failed to keep Steven in school. She was arrested, incarcerated and Steven returned to foster care. After one year in his new foster home, Steven had blossomed, become less oppositional, excelled at school and bonded with his foster parents. However, visits with biological family members had become very distressing to him and would cause him to revert to his aggressive behavior. The visits were suspended and Steven's behavior improved.

Although mother has exhibited a strong desire to parent Steven, she is unable to. After each incarceration, she excels in her recovery program. When Steven is returned to her care she relapses, returns to her drug use and becomes incarcerated. It is apparent that Steven's foster home offers the stability he has always lacked and has allowed him the opportunity for his emotional and cognitive development.



Remarkably, despite Steven's historically combative behavior, he has been able to remain in the same foster home for close to one year.

We conclude that offering family reunification services to mother is not in Steven's best interest. Substantial evidence supports the juvenile court's findings that returning Steven to mother's care would create a substantial risk of detriment to his physical or emotional well-being; that long term foster care is no longer the appropriate plan; and visitation between Steven and his mother would be detrimental to him.

The petition is denied.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge  
Superior Court County of Santa Barbara

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Reena B., in pro. per., for Petitioner.

No appearance for Respondent.

Stephen Shane Stark, County Counsel, Toni Lorien, Deputy County  
Counsel, Maria Salido Novatt, Senior Deputy, for Real Party Interest.